Colorado corporation, there is no *res* on which a Colorado statute could have imposed a lien.

The court reasons further: "The defendants having invoked the aid of the state of Colorado and taken decedent's property through the operation of its laws, must comply with any conditions that state may impose in granting the benefits." [26] It is a well-established rule of the common law that the laws of succession of the deceased's domicile govern the distribution of the movable estate wherever found.[27] In accordance with this doctrine, reaffirmed by New York statute,[28] the Surrogate used Colorado rules in his selection of the beneficiaries. But as a matter of terminology it should be carefully noted that New York did not thereby administer Colorado law.[29] A New York court can administer nothing but New York law.[30] Yet as Colorado did furnish an ingredient to the defendants' succession, Colorado might impose a tax on the privilege of succession.[31] But New York has no statute providing that New York shall collect taxes for other states. And Colorado never had any jurisdiction or power over any person or thing from whom or from which it could collect the tax here sought. The result of this unique decision is that a court without statutory authority to do so may enforce a foreign tax imposed by a state without jurisdiction or power itself to collect the tax.

IS HOMICIDE COMMITTED WHERE THE BLOW IS STRUCK OR WHERE THE DEATH OCCURS? — In *State* v. *Criqui*,[1] recently decided, we have the recurrence of a question which has been the subject of controversy from early times. A blow was struck in county A, from the effects of which the victim died in county B. The defendant was tried and convicted in the latter county under a statute which provided that in such a situation either county might entertain jurisdiction to punish the homicide. The state constitution, however, assured the accused of an impartial trial in the county where the offense was alleged to have been com-

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[26] 179 N. Y. Supp. 510, 515.

[27] Harvey *v.* Richards, 1 Mason (C. C. U. S.) 381 (1818); Lawrence *v.* Kitteridge, 21 Conn. 576 (1852). See Wilkins *v.* Ellett, 9 Wall. (U. S.) 740 (1869).

[28] "Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other [than real] property situated within the state, and the ownership and disposition of such property where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident at the time of his death." N. Y. Decedent Estate Law, § 47.

[29] See Lawrence *v.* Kitteridge, *supra;* Estate of Apple, 66 Cal. 432, 6 Pac. 7 (1885). *Cf.* Howarth *v.* Angle, 162 N. Y. 179, 187, 56 N. E. 489, 492 (1900).

Illinois by statute provided that Illinois statute laws should govern the descent and distribution of "estates, both real and personal, of residents and nonresident proprietors in this state dying intestate." REV. STAT. ILL., chap. 39, § 1. Yet the Illinois court still continued to look to the domicile of the deceased for rules of distribution of choses in action belonging to a non-resident. Cooper *v.* Beers, 143 Ill. 25, 33 N. E. 61 (1892).

[30] See BEALE, CONFLICT OF LAWS, § 112.

[31] See Magoun *v.* Illinois Bk., 170 U. S. 283, 288 (1898); United States *v.* Perkins, 163 U. S. 625, 628 (1896); *In re* Macky's Estate, 46 Colo. 79, 102 Pac. 1074 (1909); *In re* Swift, *supra.*

[1] 185 Pac. 1063 (Kan. 1919). See RECENT CASES, p. 863, *infra.*

mitted. The upper court sustained the conviction, holding that the statute did not contravene the constitutional provision since the homicide might be considered as having been committed in either county.

In early England it was doubtful whether the crime could be punished in either county. The old grand jury was composed solely of those who could testify to the event of their own knowledge, and they could not inquire into nor give testimony of any fact which had taken place beyond the bounds of their immediate county.[2] They could not indict in county A, since no evidence could be adduced of the death, a necessary ingredient of the crime; nor could they indict in the second county, since the fact of the mortal stroke could not be proved.[3] To prevent, however, a complete failure of justice through the inadequacy of the judicial machinery the device was often resorted to of removing the body to the first county, when the jury could then take cognizance of the complete offense.[4] Perhaps this practice was a recognition by the common law that the locality of the crime was fixed where the blow was struck. At any rate, according to the commentators on the criminal law,[5] this was the common opinion at that period. Yet strangely enough Parliament as early as 1547, in a statute which we inherit as part of the common law, enacted that the venue in these cases must be laid only where the death occurs.[6] From the early law, therefore, the locality of the homicide, though at different periods, was fixed at both places.

Speculation, however, as to "which one of the two legs the crime stands on" seems futile. If the blow occurs in one state and the death in another, events of equal significance [7] take place in both states and there is no concurrence of stroke and death in either.[8] Why is it not sufficient to say that events in the train of proximate causation occur in each state, for which the sovereigns of either may mete out a punishment? In state A the mortal stroke constitutes the punishable act and the state may demand retribution for the full consequences of that act. That the indictment may not be found until the death is no indication that the blow alone is not the offense. The crime is complete upon delivery of the stroke, the fact of death being necessary only as evidence to prove that the stroke was mortal.

No one has denied the right of the first state to punish the defendant.[9]

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[2] See STEPHEN, HISTORY OF THE CRIMINAL LAW, 276 *et seq.*

[3] See 1 HALE P. C. 426; 2 HAWKINS P. C. 301; BISHOP, NEW CRIMINAL LAW, 8 ed., 62, note.

[4] *Idem.*

[5] *Idem.*

[6] 2 & 3 EDW. VI, c. 24.

[7] "The stroke without the death of the party stricken, nor the death without the stroke or other violence, makes not the homicide or murder, for the death consummates the crime." 1 HALE P. C. 423.

[8] The overwhelming weight of opinion, today, undoubtedly is to the effect that the homicide is committed where the stroke occurs and the death is but a consequence. But such a view, it seems, can only be supported on the theory that the mortal blow alone constitutes the homicide.

[9] See Gessert *v.* State, 21 Minn. 369 (1875); State *v.* Bowen, 16 Kan. 476 (1876); Hunter *v.* State, 41 N. J. L. 495 (1878); Green *v.* State, 66 Ala. 40 (1880); Robertson *v.* State, 42 Fla. 212, 28 So. 427 (1900). In some of the cases cited, statutes specifically made punishable the offense if part thereof was committed within the state though the offense was consummated without the state. The other cases proceeded on the ground that the blow constituted the homicide.

Vigorous opposition, however, has been raised to the right of the second state to punish.[10] In *Commonwealth* v. *Macloon*,[11] the Massachusetts court upheld a conviction under a statute which made the homicide punishable where the death occurred, though the wounds were given in a different jurisdiction.[12] Mr. Bishop in his treatise on criminal law [13] contends, first, that no act is committed within the territory of the Massachusetts sovereign and therefore no basis is created upon which he may inflict punishment; and secondly, that the statute violates the law of nations inasmuch as it in effect makes the defendant answer for an act which took place without the state. Neither objection seems tenable. True, no new independent act takes place in the second state, yet the force which the defendant set in motion outside the jurisdiction continues to operate unabated within the state until the death. The forces have not come to rest and the state may punish for what the defendant has caused within its territorial limits. Again, the statute in its true interpretation does not attempt to make striking the blow the crime — causing the death is the event which it seeks to punish. A California case [14] can be supported only on this line of reasoning. A box of poisoned candy was sent from California to the victim, who partook of it in Delaware and there died from the effects. He was tried and convicted for murder under a statute in California. In this case the first event in the train of causation was made punishable by the legislature; in *Commonwealth* v. *Macloon* it was the last event. Furthermore, no rule of law prevents the legislature from calling either event murder or manslaughter and affixing to it the punishment and consequences that flow from either crime. Undoubtedly the defendant in these cases is open to double punishment since both state A and state B may bring separate indictments. Yet no established principle of international law denies the right of more than one state to punish the defendant, when his act constitutes a violation against the peace and dignity of several states.[15]

The principal case, though devoid of the international aspect, is governed by the above discussion in view of the constitutional provision limiting the right to change the venue in criminal prosecutions. The statute laying the venue either in county A or county B can be properly interpreted as making either the blow or the death the punishable offense, a trial in one county precluding further prosecution in the other. Taking that view, the trial in the principal case did take place where the offense was committed and the constitutional provision was in no way violated.

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[10] See BISHOP, NEW CRIMINAL LAW, 8 ed., 60, note; State *v.* Carter, 27 N. J. L. 499 (1859); State *v.* Kelly, 76 Me. 331 (1884).

[11] 101 Mass. 1 (1869).

[12] Similar statutes have been passed in other jurisdictions and have been sustained. See Reg. *v.* State, 7 Cox C. C. 277; Tyler *v.* People, 8 Mich. 320 (1860); *Ex parte* McNeely, 36 W. Va. 84, 14 S. E. 436 (1892); State *v.* Caldwell, 115 N. C. 794, 20 S. E. 523 (1894).

[13] See BISHOP, NEW CRIMINAL LAW, 8 ed., 65, note.

[14] People *v.* Botkin, 132 Cal. 231, 64 Pac. 286 (1901).

[15] Cross *v.* North Carolina, 132 U. S. 131 (1889); Marshall *v.* State, 6 Neb. 120 (1877); State *v.* Stevens, 114 N. C. 875, 19 S. E. 861 (1891).